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**IN THE
COURT OF APPEALS OF INDIANA**

PHILLIP LEHMAN,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 18A02-0602-CR-124

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Wayne J. Lenington, Judge
Cause No. 18C05-0310-FD-222; 18C05-0307-CM-12

November 1, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Phillip Lehman appeals the sentence imposed following the revocation of his probation. Specifically, Lehman contends that the trial court erred in ordering him to serve the remainder of his previously-suspended sentence after it was determined that he violated his probation by failing to register for home detention. Concluding that Lehman was properly sentenced, we affirm the judgment of the trial court.

FACTS

On July 10, 2003, Lehman was charged with resisting law enforcement, striking a law enforcement animal, and several other offenses. Following an initial hearing on July 28, 2003, the trial court allowed Lehman to be placed on home detention pending trial.

On September 22, 2003, Lehman was charged with escape and criminal mischief for allegedly removing his electronic monitoring device. Thereafter, on April 19, 2004, Lehman entered into a plea agreement whereby he agreed to plead guilty to escape, resisting law enforcement, and striking a law enforcement animal. In exchange, the State agreed to dismiss the remaining charges. The agreement also provided that Lehman was to receive a three-year sentence for escape that was to be suspended except for time served, with ninety days of electronically monitored home detention and the balance of the term on supervised probation. With regard to the resisting law enforcement and striking a law enforcement animal convictions, Lehman was to receive a one-year suspended sentence in the Delaware County Jail that was to be served consecutively to the escape sentence. The trial court accepted the proposed plea agreement and Lehman was sentenced accordingly on April 19, 2004.

Thereafter, on June 11, 2004, the State filed a petition to revoke Lehman's probation, alleging that Lehman had failed to report to the Delaware County Community Corrections Office to register for the home detention program. On January 17, 2006, the trial court conducted a hearing and found that Lehman was in violation of probation because he had failed to register for the program. As a result, Lehman was ordered to serve a total of three years in the Department of Correction. Lehman now appeals.

DISCUSSION AND DECISION

In addressing Lehman's contention that the trial court abused its discretion in ordering him to serve the originally-suspended three-year sentence, we first note that probation is a matter of grace and a conditional liberty that is a favor, not a right. Noethlich v. State, 676 N.E.2d 1078, 1081 (Ind. Ct. App. 1997). The revocation of probation deprives a defendant not of the absolute liberty to which every citizen is entitled but only of the conditional liberty that is dependent on the observance of the special restrictions of probation. Hubbard v. State, 683 N.E.2d 618, 619 (Ind. Ct. App. 1997). The trial court determines the conditions of probation, and it may revoke a defendant's probation if those conditions are violated. Id. Moreover, the violation of a single condition of probation is sufficient to revoke probation. Rosa v. State, 832 N.E.2d 1119, 1121 (Ind. Ct. App. 2005).

If the trial court finds that a condition of probation was violated, execution of the sentence that was previously suspended may be ordered. Ind. Code § 35-38-2-3(g). Additionally, we will review the trial court's decision regarding what punishment to impose for a probation violation only for an abuse of discretion. Sanders v. State, 825 N.E.2d 952,

957-58 (Ind. Ct. App. 2005), trans. denied. An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. Guillen v. State, 829 N.E.2d 142, 145 (Ind. Ct. App. 2005), trans. denied.

In this case, the record shows that the underlying offense of escape was predicated on a charge that Lehman violated a pretrial order for in-home detention by removing his electronic monitoring device. Appellant's App. p. 130. The instant violation that served as the basis for the probation revocation was the second time that Lehman failed to comply with the trial court's in-home detention order. That said, the evidence demonstrated that Lehman is either unable or unwilling to comply with such an order. Thus, we cannot say that the trial court abused its discretion in ordering Lehman to serve the previously-suspended sentence.

The judgment of the trial court is affirmed.

VAIDIK, J., and CRONE, J., concur.